

Update: Sexual Assault Benchbook

CHAPTER 2

The Criminal Sexual Conduct Act

2.2 “Penetration” Offenses

A. Criminal Sexual Conduct—First Degree

1. Statutory Authority

Effective August 28, 2006, 2006 PAs 165 and 169* amended MCL 750.520b to add general sentencing provisions applicable to first-degree criminal sexual conduct (CSC-I) convictions and to provide specific penalties for certain CSC-I offenses involving an offender aged 17 years or older and a victim under the age of 13. Although substantive amendments included revisions/additions affecting only MCL 750.520b(2) and (3), the entire statute has been reprinted here for easier reference. Replace the April 2003 update to Section 2.2(A)(1) on page 30 with the following text:

MCL 750.520b (CSC-I—Penetration) provides:

“(1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:

“(a) That other person is under 13 years of age.

“(b) That other person is at least 13 but less than 16 years of age and any of the following:

“(i) The actor is a member of the same household as the victim.

“(ii) The actor is related to the victim by blood or affinity to the fourth degree.

“(iii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

*2006 PA 169 incorporates changes first made to MCL 750.520b(2) by 2006 PA 165 (SB 709).

“(iv) The actor is a teacher, substitute teacher, or administrator of the public or nonpublic school in which that other person is enrolled.

“(c) Sexual penetration occurs under circumstances involving the commission of any other felony.

“(d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:

“(i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

“(ii) The actor uses force or coercion to accomplish the sexual penetration. Force or coercion includes, but is not limited to, any of the circumstances listed in subdivision (f).

“(e) The actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.

“(f) The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. Force or coercion includes, but is not limited to, any of the following circumstances:

“(i) When the actor overcomes the victim through the actual application of physical force or physical violence.

“(ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute these threats.

“(iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute this threat. As used in this subdivision, “to retaliate” includes threats of physical punishment, kidnapping, or extortion.

“(iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes that are medically recognized as unethical or unacceptable.

“(v) When the actor, through concealment or by the element of surprise, is able to overcome the victim.

“(g) The actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

“(h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:

“(i) The actor is related to the victim by blood or affinity to the fourth degree.

“(ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

“(2) Criminal sexual conduct in the first degree is a felony punishable as follows:

“(a) Except as provided in subdivisions (b) and (c), by imprisonment for life or for any term of years.

“(b) For a violation that is committed by an individual 17 years of age or older against an individual less than 13 years of age by imprisonment for life or any term of years, but not less than 25 years.

“(c) For a violation that is committed by an individual 17 years of age or older against an individual less than 13 years of age, by imprisonment for life without the possibility of parole if the person was previously convicted of a violation of this section or section 520c, 520d, 520e, or 520g committed against an individual less than 13 years of age or a violation of law of the United States, another state or political subdivision substantially corresponding to a violation of this section or section 520c, 520d, 520e, or 520g committed against an individual less than 13 years of age.

“(d) In addition to any other penalty imposed under subdivision (a) or (b), the court shall sentence the defendant to lifetime electronic monitoring* under section 520n.

“(3) The court may order a term of imprisonment imposed under this section to be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction.”

*Lifetime electronic monitoring, MCL 791.285, was established by 2006 PA 172, effective August 28, 2006.

CHAPTER 2

The Criminal Sexual Conduct Act

2.2 “Penetration” Offenses

A. Criminal Sexual Conduct—First Degree

4. Penalties

*2006 PA 169 incorporates changes first made to MCL 750.520b(2) by 2006 PA 165 (SB 709).

Effective August 28, 2006, 2006 PAs 165 and 169* amended MCL 750.520b to add general sentencing provisions applicable to first-degree criminal sexual conduct (CSC-I) convictions and to provide specific penalties for certain CSC-I offenses involving an offender aged 17 years or older and a victim under the age of 13. Insert the following text on page 33 after the second paragraph:

An offender aged 17 or older who is convicted of CSC-I against a victim under the age of 13 is subject to a mandatory minimum term of imprisonment. MCL 750.520b(2)(b) states:

“For a violation that is committed by an individual 17 years of age or older against an individual less than 13 years of age by imprisonment for life or any term of years, but not less than 25 years.”

An offender aged 17 or older who is convicted of CSC-I against a victim under the age of 13 and who has a previous conviction under MCL 750.520b, 520c, 520d, 520e, or 520g (or a substantially corresponding federal or state law, or law of a political subdivision) involving a victim under the age of 13 must be sentenced to life imprisonment without the possibility of parole. MCL 750.520b(2)(c).

*2006 PA 171, effective August 28, 2006.

With the exception of a conviction under MCL 750.520b(2)(c) where mandatory life without parole is the prescribed penalty, offenders convicted under MCL 750.520b(2)(a) and (b) are subject to an additional penalty. According to MCL 750.520b(2)(d), “In addition to any other penalty imposed under subdivision (a) or (b), the court shall sentence the defendant to lifetime electronic monitoring under section 520n.”*

Note: Lifetime electronic monitoring, MCL 791.285, was established by 2006 PA 172, effective August 28, 2006. Pursuant to MCL 791.285(3), “‘electronic monitoring’ means a device by which, through global positioning system satellite or other means, an individual’s movement and location are tracked and recorded.”

CHAPTER 2

The Criminal Sexual Conduct Act

2.3 “Contact” Offenses

A. Criminal Sexual Conduct—Second Degree

1. Statutory Authority

Effective August 28, 2006, 2006 PA 171 amended MCL 750.520c to require that an additional penalty be imposed on an offender convicted of second-degree criminal sexual conduct when the offender is aged 17 or older and the victim is under the age of 13. Replace the April 2003 update to Section 2.3(A)(1) on page 37 with the following text:*

MCL 750.520c (CSC-II—Contact) provides:

“(1) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:

“(a) That other person is under 13 years of age.

“(b) That other person is at least 13 but less than 16 years of age and any of the following:

“(i) The actor is a member of the same household as the victim.

“(ii) The actor is related by blood or affinity to the fourth degree to the victim.

“(iii) The actor is in a position of authority over the victim and the actor used this authority to coerce the victim to submit.

“(iv) The actor is a teacher, substitute teacher, or administrator of the public or nonpublic school in which that other person is enrolled.

“(c) Sexual contact occurs under circumstances involving the commission of any other felony.

“(d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:

*Although the substantive amendment to this statute affects only MCL 750.520c(2), the entire statute has been reprinted here for easier reference.

“(i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

“(ii) The actor uses force or coercion to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section 520b(1)(f).

“(e) The actor is armed with a weapon, or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon.

“(f) The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section 520b(1)(f).

“(g) The actor causes personal injury to the victim and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

“(h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:

“(i) The actor is related to the victim by blood or affinity to the fourth degree.

“(ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

“(i) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, the department of corrections who knows that the other person is under the jurisdiction of the department of corrections.

“(j) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, a private vendor that operates a youth correctional facility under section 20g of 1953 PA 232, MCL 791.220g, who knows that the other person is under the jurisdiction of the department of corrections.

“(k) That other person is a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment

or a work program or other probationary program and the actor is an employee or a contractual employee of or a volunteer with the county or the department of corrections who knows that the other person is under the county's jurisdiction.

“(1) The actor knows or has reason to know that a court has detained the victim in a facility while the victim is awaiting a trial or hearing, or committed the victim to a facility as a result of the victim having been found responsible for committing an act that would be a crime if committed by an adult, and the actor is an employee or contractual employee of, or a volunteer with, the facility in which the victim is detained or to which the victim was committed.

“(2) Criminal sexual conduct in the second degree is a felony punishable as follows:

“(a) By imprisonment for not more than 15 years.

“(b) In addition to the penalty specified in subdivision (a), the court shall sentence the defendant to lifetime electronic monitoring under section 520n if the violation involved sexual contact committed by an individual 17 years of age or older against an individual less than 13 years of age.”

CHAPTER 2

The Criminal Sexual Conduct Act

2.3 “Contact” Offenses

A. Criminal Sexual Conduct—Second Degree

4. Penalties

Effective August 28, 2006, 2006 PA 171 amended MCL 750.520c and added MCL 750.520n to require lifetime electronic monitoring for offenders aged 17 or older convicted of CSC-II violations involving a victim under the age of 13. Insert the following text on page 40 after the first paragraph in this subsection:

In addition to any other penalty imposed for violating MCL 750.520c, when a CSC-II conviction involves an offender aged 17 or older and a victim under the age of 13, the court must sentence the offender to lifetime electronic monitoring. MCL 750.520c(2)(b); MCL 750.520n(1).

Note: Lifetime electronic monitoring, MCL 791.285, was established by 2006 PA 172, effective August 28, 2006. Pursuant to MCL 791.285(3), “‘electronic monitoring’ means a device by which, through global positioning system satellite or other means, an individual’s movement and location are tracked and recorded.”

CHAPTER 2

The Criminal Sexual Conduct Act

2.5 Terms Used in the CSC Act

H. “Developmental Disability”

Effective August 28, 2006, 2006 PA 171 amended MCL 750.520a to specify that a “developmental disability” as defined in the CSC Act requires that all of the criteria listed in MCL 750.520a(b) be met. Replace the quote of MCL 750.520a(b) on page 64 with the following text:

MCL 750.520a(b) defines “developmental disability” as:

“an impairment of general intellectual functioning or adaptive behavior which meets all of the following criteria:

“(i) It originated before the person became 18 years of age.

“(ii) It has continued since its origination or can be expected to continue indefinitely.

“(iii) It constitutes a substantial burden to the impaired person’s ability to perform in society.

“(iv) It is attributable to 1 or more of the following:

“(A) Mental retardation, cerebral palsy, epilepsy, or autism.

“(B) Any other condition of a person found to be closely related to mental retardation because it produces a similar impairment or requires treatment and services similar to those required for a person who is mentally retarded.”

CHAPTER 3

Other Related Offenses

3.1 Chapter Overview

Effective August 24, 2006, 2006 PA 162 added a new chapter to the Penal Code—Chapter LXVIIA contains a group of new crimes involving forced labor or services, criminal sexual conduct, and child sexually abusive activity. Insert the following text after the fifth bullet (gross indecency) on page 117:

- ♦ Human trafficking offenses, MCL 750.462a to 750.462i. See Section 3.32.*

Effective August 24, 2006, 2006 PA 160 amended the Penal Code to add the crime of unlawful imprisonment, MCL 750.349b. Insert the following text before the last bullet (vulnerable adult abuse) on page 117:

- ♦ Unlawful imprisonment, MCL 750.349b. See Section 3.33.*

*Added by the September 2006 update to page 201.

*Added by the September 2006 update to page 201.

CHAPTER 3

Other Related Offenses

3.7 Child Sexually Abusive Activity

E. Pertinent Case Law

4. Definition of Terms

Insert the following text before the July 2005 update to page 137:

See also *People v Adkins*, ___ Mich App ___, ___ (2006), where the defendant was properly convicted of violating MCL 750.145c(2) when he communicated via the Internet with a law enforcement officer posing as a minor. The conduct prohibited under MCL 750.145c(2) includes the mere preparation to engage in child sexually abusive activity, and in *Adkins*, the evidence established that the defendant's communication with the perceived minor was in preparation for child sexually abusive activity. *Adkins, supra* at ____.

CHAPTER 3

Other Related Offenses

3.18 Internet and Computer Solicitation

F. Pertinent Case Law

Insert the following text after the May 2006 update to page 168:

See also *People v Adkins*, ___ Mich App ___, ___ (2006), where the defendant was properly convicted of violating MCL 750.145d(1)(a) when he communicated via the Internet with a law enforcement officer posing as a minor. The conduct prohibited under MCL 750.145d(1)(a) includes conduct described as child sexually abusive activity, MCL 750.145c(2), for which mere preparation can support a conviction. *Adkins, supra* at _____. In *Adkins*, the evidence established that the defendant's Internet communication with the perceived minor was in preparation for child sexually abusive activity. *Id.* at _____.

CHAPTER 3

Other Related Offenses

3.19 Kidnapping

A. Statutory Authority

Effective August 24, 2006, 2006 PA 159 rewrote MCL 750.349 in its entirety. Replace the quote of MCL 750.349 beginning at the bottom of page 168 and continuing on page 169 with the following text:

MCL 750.349 provides:

“(1) A person commits the crime of kidnapping if he or she knowingly restrains another person with the intent to do 1 or more of the following:

“(a) Hold that person for ransom or reward.

“(b) Use that person as a shield or hostage.

“(c) Engage in criminal sexual penetration or criminal sexual contact with that person.

“(d) Take that person outside of this state.

“(e) Hold that person in involuntary servitude.

“(2) As used in this section, ‘restrain’ means to restrict a person’s movements or to confine the person so as to interfere with that person’s liberty without that person’s consent or without legal authority. The restraint does not have to exist for any particular length of time and may be related or incidental to the commission of other criminal acts.

“(3) A person who commits the crime of kidnapping is guilty of a felony punishable by imprisonment for life or any term of years or a fine of not more than \$50,000.00, or both.

“(4) This section does not prohibit the person from being charged with, convicted of, or sentenced for any other violation of law arising from the same transaction as the violation of this section.”

CHAPTER 3

Other Related Offenses

3.19 Kidnapping

B. Elements of Offense

Insert the following text before the existing content of subsection (B) on page 169:

Note: Effective August 24, 2006, 2006 PA 159 rewrote MCL 750.349 in its entirety. The statutory revision is likely to affect the applicability and content of the Criminal Jury Instructions discussed below.

CHAPTER 3

Other Related Offenses

3.19 Kidnapping

C. Penalties

Effective August 24, 2006, 2006 PA 159 amended MCL 750.349 and added a monetary fine to the penalties available to a court when sentencing an offender convicted of kidnapping. Replace the first sentence in this subsection on page 170 with the following text:

A violation of MCL 750.349 is “a felony punishable by imprisonment for life or any term of years or a fine of not more than \$50,000.00, or both.” MCL 750.349(3). An offender convicted of kidnapping under MCL 750.349 may also be convicted of other offenses arising from the same transaction as the kidnapping violation. MCL 750.349(4).

CHAPTER 3

Other Related Offenses

Note: Instead of inserting the following new section where it would preserve the alphabetical order of the chapter and require the reader to reletter all sections following the new section, the new section below is placed after the chapter's existing sections. The alphabetical order of the chapter sections will be addressed when the benchbook is reprinted in its entirety.

3.32 Human Trafficking

Effective August 24, 2006, 2006 PA 162 added a new chapter to the Penal Code—Chapter LXVIIA contains a group of new crimes involving forced labor or services, criminal sexual conduct, and child sexually abusive activity. After the existing text on page 201, add a new Section 3.32 as indicated above, and insert the following text:

“Human trafficking” crimes include a number of separate offenses penalizing specific conduct involved in crimes related to forced labor or services. This section contains the statutory authority, necessary definitions, and penalties applicable to each of the human trafficking crimes.

A. Human Trafficking Crimes Involving Forced Labor or Services

1. Physical Harm

- Knowingly subjecting or attempting to subject another person to forced labor or services **by causing or threatening to cause physical harm** is a felony punishable by not more than 10 years of imprisonment. MCL 750.462b(1).
- If violation of the statute causes injury to another person, the offender is guilty of a felony punishable by not more than 15 years of imprisonment. MCL 750.462b(2).
- If another person's death is caused by violation of the statute, the offender *must* be sentenced to prison for life or any term of years. MCL 750.462b(3).

2. Physical Restraint

- Knowingly subjecting or attempting to subject another person to forced labor or services **by physically restraining or threatening to physically restrain** another person is a felony punishable by not more than 10 years of imprisonment. MCL 750.462c(1).

- If violation of the statute causes injury to another person, the offender is guilty of a felony punishable by not more than 15 years of imprisonment. MCL 750.462c(2).
- If another person's death is caused by violation of the statute, the offender *must* be sentenced to prison for life or any term of years. MCL 750.462c(3).

3. Abuse of the Legal Process

- Knowingly subjecting or attempting to subject another person to forced labor or services **by abusing or threatening to abuse the law or legal process** is a felony punishable by not more than 10 years of imprisonment. MCL 750.462d(1).
- If violation of the statute causes injury to another person, the offender is guilty of a felony punishable by not more than 15 years of imprisonment. MCL 750.462d(2).
- If another person's death is caused by violation of the statute, the offender *must* be sentenced to prison for life or any term of years. MCL 750.462d(3).

4. Interference with Passport/Immigration/Identification

- Knowingly subjecting or attempting to subject another person to forced labor or services **by knowingly destroying, concealing, removing, confiscating, or possessing an actual or purported passport or other immigration document, or any other actual or purported government identification document** is a felony punishable by not more than 10 years of imprisonment. MCL 750.462e(1).
- If violation of the statute causes injury to another person, the offender is guilty of a felony punishable by not more than 15 years of imprisonment. MCL 750.462e(2).
- If another person's death is caused by violation of the statute, the offender *must* be sentenced to prison for life or any term of years. MCL 750.462e(3).

5. Blackmail or Financial Harm/Control

- Knowingly subjecting or attempting to subject another person to forced labor or services **by using blackmail, using or threatening to cause financial harm to, or exerting or threatening to exert financial control** over another person is a felony punishable by not more than 10 years of imprisonment. MCL 750.462f(1).

- If violation of the statute causes injury to another person, the offender is guilty of a felony punishable by not more than 15 years of imprisonment. MCL 750.462f(2).
- If another person's death is caused by violation of the statute, the offender *must* be sentenced to prison for life or any term of years. MCL 750.462f(3).

6. Recruiting, etc. Knowing or Intending the Result

- A person who knowingly or intentionally **recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means** another person for the purpose of forced labor or services is guilty of a felony punishable by not more than 10 years of imprisonment. MCL 750.462h(1)(a), (2).
- If violation of the statute causes injury to another person, the offender is guilty of a felony punishable by not more than 15 years of imprisonment. MCL 750.462h(3).
- If another person's death is caused by violation of the statute, the offender *must* be sentenced to prison for life or any term of years. MCL 750.462h(4).

7. Financial Benefit

- A person who **benefits financially or receives anything of value from participating in a venture engaged in conduct prohibited under the human trafficking chapter** is guilty of a felony punishable by not more than 10 years of imprisonment. MCL 750.462h(1)(b), (2).
- If violation of the statute causes injury to another person, the offender is guilty of a felony punishable by not more than 15 years of imprisonment. MCL 750.462h(3).
- If another person's death is caused by violation of the statute, the offender *must* be sentenced to prison for life or any term of years. MCL 750.462h(4).

B. Human Trafficking Crime Involving Child Sexually Abusive Activity

MCL 750.462g states:

“A person shall not knowingly recruit, entice, harbor, transport, provide, or obtain by any means, or attempt to recruit, entice, harbor, provide, or obtain by any means, a minor knowing that the minor will be used for child sexually abusive activity. A person

who violates this section is guilty of a felony punishable by imprisonment for not more than 20 years.”

C. Human Trafficking Crimes Involving Other Crimes

MCL 750.462i states:

“If a violation of this chapter involves kidnapping or an attempt to kidnap, criminal sexual conduct or an attempt to commit criminal sexual conduct, or an attempt to kill, the defendant shall be imprisoned for life or any term of years.”

D. Definition of Terms Used in the Human Trafficking Chapter

- ♦ **“Child sexually abusive activity”** means “a child engaging in a listed sexual act” as defined in MCL 750.145c. MCL 750.462a(a). See Section 3.7 for more information.
- ♦ **“Commercial sexual activity”** means “[a]n act of sexual penetration or sexual contact as those terms are defined in [MCL 750.]520a for which anything of value is given or received by any person” or any conduct prohibited under MCL 750.145c(2) or (3) (creation, production, distribution, promotion, etc. of child sexually abusive material). MCL 750.462a(b). See Section 3.7(A) for information on child sexually abusive material, and Section 2.5 for more discussion of the terms “sexual penetration” and “sexual contact.”
- ♦ **“Extortion”** means conduct prohibited under MCL 750.213, “including, but not limited to, a threat to expose any secret tending to subject a person to hatred, contempt, or ridicule.” MCL 750.462a(c). See Section 3.14 for more information.
- ♦ **“Financial harm”** means criminal usury (MCL 438.41), extortion, employment contracts in violation of the wage and benefit provisions in MCL 408.471 to 408.490, or any other adverse financial consequence. MCL 750.462a(d).
- ♦ **“Forced labor or services”** means labor or services obtained or maintained by conduct described in at least one of the following provisions:
 - causing/threatening to cause serious physical harm to another person.
 - physically restraining/threatening to physically restrain another person.
 - abusing/threatening to abuse the law or legal process.
 - knowingly destroying, concealing, removing, confiscating, or possessing another person’s actual or purported passport or other

immigration document, or any other government identification document.

- blackmail.
- causing/threatening to cause financial harm to any person. MCL 750.462a(e).
- ♦ **“Labor”** means work having economic or financial value. MCL 750.462a(f).
- ♦ **“Maintain,”** as it relates to labor or services, means “to secure continued performance of labor or services, regardless of any initial agreement on the part of the victim to perform the labor or services.” MCL 750.462a(g).
- ♦ **“Minor”** means a person under the age of 18. MCL 750.462a(h).
- ♦ **“Obtain”** means securing the performance of labor or services. MCL 750.462a(i).
- ♦ **“Services”** means “an ongoing relationship between a person and another person in which the other person performs activities under the supervision of or for the benefit of the person, including, but not limited to, commercial sexual activity and sexually explicit performances.” MCL 750.462a(j).

CHAPTER 3

Other Related Offenses

Note: Instead of inserting the following new section where it would preserve the alphabetical order of the chapter and require the reader to reletter all sections following the new section, the new section below is placed after the chapter's existing sections. The alphabetical order of the chapter sections will be addressed when the benchbook is reprinted in its entirety.

3.33 Unlawful Imprisonment

Effective August 24, 2006, 2006 PA 160 amended the Penal Code to add the crime of unlawful imprisonment, MCL 750.349b. On page 201, immediately after the update adding Section 3.32 on Human Trafficking, add a new Section 3.33 as indicated above, and insert the following text:

A. Statutory Authority and Penalties

A person who knowingly restrains another person under any of the following circumstances has committed the crime of unlawful imprisonment:

- use of a weapon or dangerous instrument to restrain the person.
- the person restrained was secretly confined.
- the person was restrained in order to facilitate the commission of another felony or to facilitate flight after another felony was committed. MCL 750.349b(1)(a)–(c).

The crime of unlawful imprisonment is a felony punishable by not more than 15 years of imprisonment or a fine of not more than \$20,000.00, or both. MCL 750.349b(2). In addition, a defendant may be charged with, convicted of, or sentenced for any other violation of law occurring during the defendant's commission of the unlawful imprisonment violation. MCL 750.349b(4).

B. Definitions of Relevant Statutory Terms

MCL 750.349b(3) defines the following terms:

- ♦ **“Restrain”** means to forcibly restrict a person's movements or to forcibly confine the person so as to interfere with that person's liberty without that person's consent or without lawful authority. The restraint does not have to exist for any particular length of time and may be related or incidental to the commission of other criminal acts.” MCL 750.349b(3)(a).

- ♦ **“Secretly confined”** means “[t]o keep the confinement of the restrained person a secret [or t]o keep the location of the restrained person a secret.” MCL 750.349b(3)(b).

CHAPTER 4

Defenses To Sexual Assault Crimes

4.9 Impossibility

Insert the following text before the partial paragraph near the bottom of page 225:

But see *People v Adkins*, ___ Mich App ___, ___ (2006), where the defendant was properly convicted of violating MCL 750.145c(2) when he communicated via the Internet with a law enforcement officer posing as a minor. The conduct prohibited under MCL 750.145c(2) includes the mere preparation to engage in child sexually abusive activity, and in *Adkins*, the evidence established that the defendant's communication with the perceived minor was in preparation for child sexually abusive activity. *Adkins, supra* at ____.

CHAPTER 5

Bond and Discovery

5.14 Discovery in Sexual Assault Cases

B. Discovery Rights

1. Generally

Insert the following text after the fifth bullet near the middle of page 269:

A tacit agreement between the prosecution and a witness concerning potential or actual leniency related to the witness's criminal conduct is favorable evidence subject to disclosure under *Brady v Maryland*, 373 US 83 (1963). *Bell v Bell*, ___ F3d ___, ___ (CA 6, 2006). Upon the defendant's request, disclosure of an "agreement for testimony in connection with the case" is required under MCR 6.201(B)(5).

CHAPTER 9

Post-Conviction and Sentencing Matters

9.5 Imposition of Sentence

C. Second or Subsequent CSC Convictions

Effective August 28, 2006, 2006 PAs 165 and 169* amended MCL 750.520b to add a sentencing provision applicable to offenders aged 17 or older with certain previous criminal sexual conduct convictions involving a victim under the age of 13 when those offenders are subsequently convicted of first-degree criminal sexual conduct involving a victim under the age of 13. Insert the following text after the first **Note** near the top of page 456:

The Criminal Sexual Conduct Act mandates a sentence of life imprisonment without the possibility of parole for a defendant aged 17 or older convicted of CSC-I against a victim under the age of 13 when the defendant has a previous conviction under MCL 750.520b, 520c, 520d, 520e, or 520g involving a victim under the age of 13. MCL 750.520b(2)(c). A sentence imposed under MCL 750.520b may be made consecutive to any term of imprisonment imposed for any other offense arising from the same transaction. MCL 750.520b(3).

*2006 PA 169 incorporates changes first made to MCL 750.520b(2) by 2006 PA 165 (SB 709).

CHAPTER 9

Post-Conviction and Sentencing Matters

9.8 Parole

Effective August 28, 2006, 2006 PAs 167, 168, and 170 amended MCL 791.234, 791.236, and 791.242 to incorporate specific parole provisions related to criminal sexual conduct convictions. After the third paragraph in Section 9.7 on page 474, add a new section as indicated above, insert the following text, and renumber the existing Section 9.8 accordingly:

An offender sentenced to a term of years under MCL 750.520b(2)(b) for first-degree criminal sexual conduct (CSC-I) is eligible only for life parole. MCL 791.242(3). An offender granted life parole under MCL 791.242(3) remains subject to mandatory lifetime electronic monitoring under MCL 750.520n. MCL 750.520b(2)(d).

An offender convicted of CSC-I and sentenced to life imprisonment under MCL 750.520b(2)(b) is not eligible for parole. MCL 791.234(6)(e).

Where an offender is not already subject to lifetime electronic monitoring pursuant to MCL 750.520n, the parole board may require electronic monitoring when granting parole to an offender convicted of violating or conspiring to violate MCL 750.520b (CSC-I) or 750.520c (CSC-II). MCL 791.236(15). When an offender is subject to electronic monitoring under such circumstances, the monitoring is limited to the duration of the offender's parole. MCL 791.236(15)(a).

Note: Lifetime electronic monitoring, MCL 791.285, was established by 2006 PA 172, effective August 28, 2006. Pursuant to MCL 791.285(3), “‘electronic monitoring’ means a device by which, through global positioning system satellite or other means, an individual’s movement and location are tracked and recorded.”